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January 11, 1996

Mr. William Caton,
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Implementation
of Sections of the Cable Tele-
vision Consumer Protection
and Competition Act of 1992 -
Rate Regulation

Uniform Rate-Setting Methodology

Notice of Proposed Rulemaking

CS Docket No. 95-174

Dear Mr. Caton:

Enclosed for filing please find an original and four (4)
copies of the Comments of the New Jersey State Board of Public
Utilities with regard to the above captioned matter.

Very truly yours,

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

By: James Eric Andrews
James Eric Andrews
Deputy Attorney General

JEA:tm

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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of Sections of the Cable Television
Consumer Protection and Competition
Act of 1992-- Rate Regulation

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**COMMENTS OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

INTRODUCTION

The New Jersey State Board of Public Utilities ("Board"), by its attorneys, respectfully submits comments in response to the issuance of a Notice of Proposed Rulemaking ("NPRM") in the above captioned matter which was released by the Federal Communications Commission ("Commission") on November 29, 1995. Pursuant to the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., the Board is the franchising authority for cable television operators in the State of New Jersey. As of October 1, 1993, the Board was certified to regulate basic service rates, equipment charges and additional outlets in New Jersey pursuant to 47 C.F.R. 76.910(e).

In the NPRM, the Commission discusses the design and implementation of an optional rate-setting methodology which would allow for the establishment of uniform rates for uniform cable service tiers offered in multiple franchise areas and possibly in multiple systems where more than one headend is utilized, and tentatively concludes that it would be beneficial for subscribers, franchising authorities and operators, to establish such rates. In this regard, the Commission reasons that a single rate for cable services over a broad geographic region could lower marketing costs and enhance efficiency and allow for a better response to competition from alternative service providers which are not constrained by franchise boundaries. NPRM, paragraph 12.

As discussed in more detail below, the Board favors uniform rates for uniform services so long as such uniformity is not based on data developed and reviewed by franchising authorities in more than one state, and so long as the establishment of such rates will not give rise to a massive amount of channel restructuring which could lead to confusion among subscribers. It is also the Board's strong view that there are simply too many issues involved for this matter to be treated as a NPRM with a 30-day response time and that it has really been impossible for this Board to respond effectively to the issues raised. The Board

therefore urges the Commission to treat this matter as an inquiry or pre-proposal for comment and not as a proposed rulemaking. In this way, the Commission, after its review of the comments and replies received, will be in position to reissue the matter as a proposed rulemaking and thereby allow sufficient time for franchising authorities and other entities to consider the empirical evidence available before the submittal of final comments.

SEVERAL CABLE OPERATORS ALREADY CHARGE UNIFORM RATES

It appears that the Commission's primary rationale with regard to the establishment of uniform rates is that in some areas of the country rates are frequently different from one municipality to another which only adds to regulatory burdens and confusion among subscribers. In New Jersey, the Board and the affected cable companies have greatly reduced this problem by allowing for the development of uniform cable rates where uniform services are offered in contiguous systems which operate from one headend. For example, In New Jersey, TCI of Northern New Jersey charges the same rates in 53 municipalities, TKR Cable (Tri-System) charges the same rates in 27 municipalities, C-Tec (Comvideo systems) charges the same rates in 29 municipalities and Suburban Cablevision charges

the same rates in 42 municipalities. The above operators have been able to operate in this manner because, unlike most other areas around the country, the Board is the franchising authority for the entire State of New Jersey. The Board notes, however, that any further expansion of uniform rates in New Jersey would likely require the restructuring of the services offered.

UNIFORM RATES CROSSING STATE BORDERS

The Commission asks for comment on the costs and benefits of limiting the methodologies suggested to one state or county. NPRM, paragraph 14. While the establishment of rate districts covering more than one county has already occurred in many instances in New Jersey, and while this has not been a problem, the Board has serious concerns with regard to any proposal which would extend uniformity across state borders.

To begin with, there is no question that the creation of multi-state rate districts would be very confusing and difficult to administer given the disparity between the modes of regulating from one state to another. Moreover, because offerings in neighboring states would have to be identical to those offered in New Jersey, the Board would be obligated in many instances to check the cost data and channel line-ups approved by other franchising authorities

to determine whether said costs were properly factored into the uniform BST rates to be charged in New Jersey. Also, in some areas outside New Jersey, there is no franchising authority which has been certified by the Commission to review the BST rates in the first place. Finally, as noted by the Commission, it is possible that different local franchise authorities will have issued tolling orders with differing tolling periods. While this would not be a problem in New Jersey where the Board is the sole franchising authority and, therefore, the only entity issuing tolling orders, this could be a significant problem should the uniform rate structure encompass areas outside of New Jersey. Therefore, because of the potential for an adverse impact on New Jersey subscribers due to the collection of data originally analyzed by franchising authorities other than the Board, the Board strongly urges the Commission that it limit uniformity in rates to areas within particular states.

PROPOSED METHODOLOGIES FOR THE SETTING UNIFORM RATES

The Commission also seeks comment on two proposed methodologies for the establishment of uniform rates. NPRM, paragraph 15. Under one proposal (Proposal # 1), the cable operator would first identify Basic Service Tier (BST) and Cable

Programming Services Tier (CPST) rates as adjusted to reflect permitted or required rate changes due to the addition or deletion of channels necessary to structure uniform tiers throughout the area served. Once this is done, the BST rate would be determined by reducing the rate to the lowest regulated BST rate charged in the relevant region. However, the cable operator would then add the total amount of "lost" revenue caused by the reduction in BST rates to the total CPST revenues for all the areas in the relevant region, and establish a uniform CPST rate by dividing the total of the displaced BST revenues and existing CPST revenues by all CPST subscribers in the relevant region. Because the resulting BST rates would not be increased, the Commission believes that this approach would reduce the need for local franchising authority review. The Commission asks for comment on (1) the costs and benefits of requiring operators to reduce BST rates to the lowest common rate under this option, (2) the impact of an operator's redistribution of BST rate reductions among CPST rates charged in neighboring franchise areas, and (3) the application of the Commission's going forward policies and annual rate adjustments on a regional basis. NPRM, paragraph 18.

Under a second proposal (Proposal #2), a cable operator would determine or identify BST and CPST rates charged in each of

the relevant areas as adjusted for changes caused by the addition or deletion of channels necessary to structure uniform service tiers, but unlike Proposal #1, the operator would determine a single "blended" rate for its BSTs and a single blended rate for its CPSTs which would both be charged in the relevant area. The "blended" rate would be determined by averaging the operator's total BST and CPST rates, respectively, on a per subscriber basis for all subscribers in the region, in order to ensure that the establishment of uniform rates is revenue-neutral to the cable operator. Unlike Proposal #1 where there would be no increase in the BST rates, under Proposal #2, the cable operator would be required to justify to the Board and other franchising authorities any increases in BST rates resulting from the development of the "blended" rates. The Commission requests comment on (1) whether there are any associated burdens under Proposal #2 for regulated cable companies and regulators, (2) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, (3) whether the proposed calculation of the blended rate is appropriate, and (4) whether the application of the Commission's going-forward policies and annual adjustment method on a regional basis are appropriate. NPRM, paragraph 20.

The Board does not believe that it is possible, given the time allowed by the Commission, to respond to all of the above questions in an effort to determine whether Proposal #1 or Proposal #2 is preferable for New Jersey subscribers, cable operators or the Board, without first knowing the actual numbers involved. Moreover, because it was not initially copied on the NPRM, the Board has had only 15 days to collect empirical data to determine which proposal it prefers and during this entire time, the Commission because of the Federal Government shut-down, has not been available to answer questions the Board has had about the proposals.

It is clear that Proposal #1 would favor subscribers who receive basic only, with some resulting subsidization from the CPST to the BST, while Proposal #2 would tend to average the adjustment such that there could be increases or reductions in both the BST and the CPST. In addition, while on the one hand Proposal #1 would effectively eliminate Board oversight because under its terms, BST rates would be reduced to the lowest BST rate charged, presumably below the maximum permitted rates approved by the Board, and the additional costs associated with doing this would therefore be shifted to the CPST which would not be regulated by the Board; on the other hand, Proposal #2 would require more review by the Board because BST rates could increase. However, since any further

expansion in the development of uniform rates in New Jersey would likely require some restructuring in order to establish uniform service, it is not possible to determine the overall impact of the two proposals unless the Board first determines what effect restructuring will have on rates, which it cannot do until such time as it reviews operators' applications.

UNIFORM RATES CROSSING BOUNDARIES OF AREAS OF DOMINANT INFLUENCE

The Commission asks for comment on the costs and benefits of limiting the uniform rate-setting methodology to a single Area of Dominant Influence (ADI). The Commission notes, that there could be a problem if the uniform rate structure is extended to cover more than one Area of Dominant Influence (ADI). NPRM, paragraph 14.

In New Jersey, there are two ADIs; the Philadelphia ADI and the New York City ADI. Under the Commission's regulations and Form requirements, cable operators must factor in ADI characteristics which have an impact on channel line-ups, which in turn have an impact on their maximum permitted rates. Therefore, this methodology can have the effect of imposing a limitation on the possible size of a uniform rate district in New Jersey, because it would be difficult to establish uniform rates for an area which crosses ADI boundaries. However, uniformity of services would not

necessarily be impossible should the cable operator determine on its own to provide uniform services beyond the requirements of a particular ADI in order to reach the goal of uniform rates across ADI boundaries. Therefore, the Board is not opposed to the establishment of uniform rates which cross ADI boundaries, so long as the services offered are uniform.

ALLOWING CABLE OPERATORS TO SELECT THE REGION

The Commission asks for comment on the costs and benefits of allowing cable operators to select the region in which to set uniform rates. NPRM, paragraph 14. To some extent, cable operators are already doing this in New Jersey. However, it is the Board's position that the final say should rest with the franchising authorities and that in New Jersey, the Board must continue to determine whether the services offered are truly uniform. Therefore, the Board urges that final say on the extent of a uniform rate district remain with the local franchising authority.

TIMING OF ANY INCREASES IN CPST RATES

The Commission also seeks comment on whether it would be appropriate to either limit the amount of resulting increases in CPST rates caused by the establishment of uniform rates or in the

alternative, phase-in such increases over a two year period. NPRM, paragraph 21. While a phase-in of CPST rate changes would have the beneficial effect of reducing rate shock, it is not clear how this would be accomplished since to do so would result in a reduction of revenues to the cable operators, thereby reducing the incentive to establish uniform rates.

FRANCHISE RELATED EXPENSES

The Commission also asks whether its uniform rate proposals will require any adjustment to accommodate differing costs associated with requirements imposed by local franchising authorities. NPRM, paragraph 24. Even though the Board is the certified franchising authority for the entire State, this could be a problem in New Jersey because municipalities are still permitted to set the local access channel requirements. Because uniformity of service is a prerequisite to the establishment of uniform rates, the Board believes that such uniformity will not be possible in areas where local franchising authorities impose disparate requirements on operators. One of the Commission's proposals for which it seeks comment is that municipalities could simply itemize and charge for franchise related costs outside a uniform rate-setting formula, which means that such charges would not be part

of the regular uniform rates to subscribers. NPRM, paragraph 24. However, the Board believes that such itemization could cause confusion in New Jersey and possibly defeat the purpose of having uniform rates in the first place.

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Commission consider and act on the above requests before final approval.

Respectfully submitted,

DEBORAH T. PORITZ
ATTORNEY GENERAL

Dated: 1/11/96

By: 

James Eric Andrews
Deputy Attorney General